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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,926	06/26/2001	Yasuhiro Ogata	29288.1400	3852
20222 7590 03/16/2010 SNELL & WILMER L.L.P. (Main) 400 EAST VAN BUREN ONE ARIZONA CENTER PHOENIX, AZ 85004-2202				
EXAMINER SHIBRU, HELEN				
ART UNIT 2621		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/892,926

Applicant(s)

OGATA ET AL.

Examiner

HELEN SHIBRU

Art Unit

2621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of invention I in the reply filed on 12/21/2009 is acknowledged. Claim 24 is cancelled.

Response to Amendment

2. The amendments, filed 07/24/2009, have been entered and made of record. Claims 16-23 are pending.

Response to Arguments

3. Applicant's arguments filed 07/24/2009 have been fully considered but they are not persuasive. See the response sets forth below.

Applicant states the cited prior art of Hanaya fails to teach, the volume level of the third and second signal being different.

In response the Examiner respectfully disagrees. Hanaya teaches in col. 7 lines 41-44 that the volume up and down button is operated (volume up and down button are operated by nothing else but the user). The user has the capability of using the remote and the volume up and down button provided when desires. The claims do not specifically recites the volume level was set before they are obtained by the user. The user can set the audio signals that she/he 'obtains' to have a desire volume level. Hence the volume level between the two signals is different.

Applicant states, Applicant's disagree that Hanaya teaches the user operating the switching process subsequent to the mute state, as recited by the independent claim 20."In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., teaches the user operating

the switching process subsequent to the mute state) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Claim 20 merely recites the output control section transfers from the mute state and starts an output of the sound based on the second audio signal when the operation of the user is detected by the operation detecting section subsequent to the mute state.

Applicant states, "Applicant's asserts that Hanaya also fails to teach the feature of '...when an operation of the user is detected by the operation detecting section while the sound based on the third audio signal is being output, transfers to a mute state, and the output control section transfers from the mute state.'

The following is the Examine response with regard to Applicant's argument stated just above. According to this limitation, the Applicant recites the limitation in the following order:

1. Operation performed by the user
2. Operation is detected while third signal is output
3. Transfer to mute state.

Applicant's admits on the remark page 6 starting from last three lines to page 7 line 2, "although Hanaya teaches that the user operates the channel switching, it is obvious that the user operation occurs before the mute state. In particular, the channel switching operation is performed in response to the user operation (i.e., after the user operation). Further, the mute state is entered after the channel switching operation has begun. Thus, it is clear that the mute state is entered after the switching process has begun."

Therefore the applied prior art teaches the limitation as admitted by the Applicants. The claim, as written, does not distinguish itself from the applied prior art by going to a mute state before switching or before user input.

The claimed invention does in fact read on the cited references for at least the reasons discussed above and as stated in the detail Office Action as follows. Therefore the rejection is maintained.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 16-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Hanaya (US Pat. No. 5,754,258).

Regarding claim 16, Hanaya teaches an audio processing apparatus, comprising:

a second obtaining section for obtaining a second audio signal from a second source (audio signal of the ‘currently received channel’ as shown in figure 25); a third obtaining section for obtaining a third audio signal from a third source (audio signal of the ‘newly input channel’ as shown in figure 25), the third audio signal having a volume level different from that of the second audio signal (see col. 6 lines 18-26, col. 7 line 41-44 and also see figure 4 the volume button switch is operated when volume is up and down); and an output control section for selectively switching between the second audio signal obtained at the second obtaining section

and the third audio signal obtained at the third obtaining section to be output as a sound from a speaker (switching from the currently received channel to the newly received channel and then to the currently received channel is performed as shown in figure 25), wherein when switching a sound to be output from the speaker from a sound based on the third audio signal to a sound based on the second audio signal (second and third audio signals are outputted based on second and third audio level), the output control section completes an output of the sound based on the third audio signal, passes through a mute state, and subsequently starts an output of the sound based on the second audio signal (see figure 25, abstract, and col. 21 line 1-col. 22 line 15, when the answer to SP113 is 'yes', the newly received audio signal is muted and completed and only the second audio signal is outputted at the end).

Regarding claim 17, Hanaya discloses the third source is a reproduction only medium (see figure 4 and col. 10 line 66-col. 11 line 11).

Regarding claim 18, Hanaya discloses the third audio signal has a smaller volume level than the second audio signal (the volume of the third audio signal is up using volume up and down button, see col. 7 lines 41-44).

Regarding claim 19, Hanaya teaches a first obtaining section for obtaining a first audio signal from a first source, the first audio signal having the same volume level as the second audio signal (see col. 10 lines 53-col. 11 line 11 where the prior art teaches receiving multiple audio signals with the corresponding multiple channels, and the level is controlled using the up and down button, and using the button the first audio signal have same audio level with the second audio signal), wherein the output control section selectively switches among the second audio

signal obtained at the second obtaining section, the third audio signal obtained at the third obtaining section, and the first audio signal obtained at the first obtaining section to be output as a sound from a speaker (see col. 7 lines 40-57 switching channels or selectively switching channels is performed); and when switching a sound to be output from the speaker from the sound based on the first audio signal to the sound based on, the second audio signal, the output control section completes an output of the sound based on the first audio signal and subsequently starts an output of the sound based on the second audio signal (see rejection of claim 16 above).

Regarding claim 20, Hanaya discloses an audio processing apparatus, comprising: a second obtaining section for obtaining a second audio signal from a second source (see rejection of claim 16 above); a third obtaining section for obtaining a third audio signal from a third source, the third audio signal having a volume level different from that of the second audio signal (see rejection of claim 16 above); an output control section for selectively between switching the second audio signal obtained at the second obtaining section and the third audio signal obtained at the third obtaining section to be output as a sound from a speaker (see rejection of claim 16 above); and an operation detecting section for detecting an operation of a user (see col. 4 lines 54-61, col. 7 lines 58-67 where the prior art teaches user operates the switching process), wherein when switching a sound to be output from the speaker from a sound based on the third audio signal to a sound based on the second audio signal, the output control section completes an output of the sound based on the third audio signal when an operation of the user is detected by the operation detecting section while the sound based on the third audio signal is being output, transfers to a mute state, and the output control section transfers from the mute state and starts an output of the sound based on the second audio signal when the operation

of the user is detected by the operation detecting section subsequent to the mute state (see rejection of claim 1 above and col. 7 lines 58-67 where the prior art teaches user operates the switching process).

Method claims 21-23 are rejected for the same reasons as discussed in claims 1-18 respectively above.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HELEN SHIBRU whose telephone number is (571)272-7329. The examiner can normally be reached on M-F, 8:30AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THAI Q. TRAN can be reached on (571) 272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HELEN SHIBRU/
Examiner, Art Unit 2621
March 13, 2010

/Thai Tran/
Supervisory Patent Examiner, Art Unit 2621